



Paper No. 11

KEITH A CUSHING
4201 S W VACUNA ST
PORTLAND , OR 97219In re Application of)
Frank A. Tycksen, et al.)
Application No. 08/822,661)
Filed: March 24, 1997)
For: DIGITAL CERTIFICATE)DECISION
ON
PETITIONDirector's Office
Group 2700

AUG 09 2000

Mailed

This is in response to the Petition to Withdraw Holding of Abandonment, filed May 30, 2000.

This application is in an abandoned status for failure to respond in a timely and effective manner to the Notice of Allowance mailed December 17, 1999. A Notice of Abandonment was not mailed.

Petitioner asserts that the Notice of Allowance dated December 17, 1999, was not received. In the absence of any irregularity in the mailing of the Notice of Allowance, there is a strong presumption that the Notice of Allowance was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Notice of Allowance was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

A review of the record indicates that the Notice of Allowance was properly mailed to the practitioner of record at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the Notice of Allowance on the part of the Patent and Trademark Office.

To support the petition, the petitioner has submitted, *inter alia*, a copy of the docket records where the non-received Notice of Allowance would have been entered had it been received, and a statement from the practitioner stating that a search of the office, the application file, and docket records indicates that the Notice of Allowance was not received.

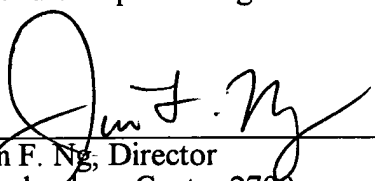
The petitioner has made a sufficient showing of nonreceipt of the Notice of Allowance based upon the docket records submitted and upon the statements from the practitioner. Accordingly, the application was not abandoned in fact.

The petition is **GRANTED**.

A Notice of Allowability was also mailed with the Notice of Allowance on December 17, 1999. Since it has been concluded that petitioner did not receive the Notice of Allowance, it is also presumed that petitioner did not receive the Notice of Allowability. The Notice of Allowance and Notice of Allowability mailed December 17, 1999, are hereby vacated. The application file is being forwarded to the group technical support staff for mailing of a new Notice of Allowance and Notice of Allowability. The time period for response will be set to run from the date the new Notices are mailed.

No petition fee is required for a petition to withdraw the holding of abandonment. Therefore, the petition fee paid of \$130.00 will be refunded upon written request directed to the Refund Branch of the Office of Finance. A copy of this letter should be included with the request for refund.

After the Notices are mailed, the file will be forwarded to the Publications Division, Issue Branch for further processing.



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